

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 11 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE N.J.PANDYA and
MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

STATE OF GUJARAT

Versus

HEIRS OF SHAMALBHAI CHHAGAN

Appearance:

MR MR ANAND, GP WITH MR.AJ DESAI, AGP for Appellant.
MR GN SHAH for Respondent.

CORAM : MR.JUSTICE N.J.PANDYA and

MR.JUSTICE A.R.DAVE

Date of decision: 22/07/96

ORAL JUDGEMENT : [Per : Pandya, J]

The appeal is filed by the original defendant of Spl.Civil Suit No.112/80 as the learned Trial Judge gave a decree in favour of the plaintiff for the claim of Rs.1,12,72,500/. The judgment came to be given by the learned Civil Judge (S.D.) at Bharuch on 18.5.1990. The

suit was filed on the basis that the plaintiff respondent had a subsisting mining lease in respect of 1.81.51 Hectares of land in Zagadia taluka of Bharuch District. The lease deed was originally granted by the State of Gujarat in favour of one K.M. Akikwala on or about 15.12.1962 for a period of 20 years. The actual date of lease was 14.6.1963. The lease came to be transferred in favour of the plaintiff respondent on or about 10.8.1976. The lease was thus to subsist till 14.5.1983.

According to the rights available to the lessee under the lease deed he was to operate upon the area of lease and win mineral as was possible. However, according to the plaintiff, defendant appellant had started unauthorised work of Shankara Irrigation Project and for the purpose had encroached upon the large portion of the area whereby making it impossible for the lessee to operate etc. He, therefore, has suffered loss and, therefore, by way of compensation and damages as set out in the plaint, the suit for the aforesaid amount came to be filed and it came to be decreed.

We are not required to go much into the details of the case for the simple reason that the suit which came to be filed on 13.11.1980 or there about on the basis that the plaintiff had subsisting interest in the lease itself would not be maintainable on the ground that before the suit was filed on or about 2.6.1980, the State of Gujarat had accepted the transfer application made by the plaintiff in favour of one A.I.Saiyed. Here also, the brief history is required to be recorded.

The transfer application was preceded by the letter for surrender which came to be withdrawn within the time limit of one year. That withdrawal was permitted. However, thereafter, by an application dated 19.8.1978, transfer in favour of Shri Saiyed was forwarded, but was not attended to by the State Government for a period of 12 months and, therefore, it was deemed to have been rejected. The proposed transferee, therefore, moved the Central Government under sec.30 of the Mines & Minerals (Regulation & Development) Act, 1957. Accepting the revision, the Central Government revived the said transfer application directing the State Government to consider the application within the period of 200 days of its receiving the order of the Central Government. The State Government, on or about 2.6.1980 allowed the transfer application.

Challenging the order of the Central Government as also the action of the State Government, the plaintiff

respondent filed Spl.CA No. 1882/80, we have disposed of that application by judgment today. The learned Chief Justice has assigned that Spl.Civil Application to us because the matter involved in the appeal as well as said Spl.C.A. are interconnected.

Spl.Civil Application came to be rejected by us. The result, therefore, is that the transfer has become effective. This having taken place in the month of June 1980, the suit filed in the month of November 1980 obviously would also fail. The Basis of the plaintiff's claim as set out in the plaint is that on his being a lessee and his interest as such being subsisting right up to the date of expiry, the transfer having taken place in the year 1980, obviously the plaintiff respondent had seized to be a lessee and, therefore, his suit for damages and compensation on the basis that he is still a lessee and is having subsisting interest under the lease has to fail.

Otherwise also, in our opinion, on merits, the appellant has got a very good case. It has come on record that on 30.6.1977, this very plaintiff -respondent had applied for surrendering lease which proposal the Govt. has accepted as per exh.166 dated 27.10.1977. Thereafter, the Govt. started taking consequential actions. However, vide exh.117 dated 20.4.1978, plaintiff applied for withdrawal of surrender of lease which came to be granted on 2.6.1978 vide exh.176.

As if this is not enough, this very plaintiff again applied for transfer of lease by an application exh.120 dated 16.8.1978 seeking approval as to the proposed transfer. This transfer application ultimately came to be allowed as stated earlier. It is significant to note that this proposed transfer was for a consideration of Rs. 5001/-. In the background of the aforesaid transaction, in the year 1978 which came to be finally approved by the State Government in the month of June, 1980, it is indeed befalling that plaintiff has put forth claim of Rs. 1,12,72,500/ in November 1980. That bafflement is further compounded by the trial court having given decree in favour of the plaintiff.

In doing that, the trial court seems to have carried away by expert opinion and further hypothetical postulation of lease having been renewed for a further period of 20 years. Apart from the fact that the transfer has been approved, on merits also, as stated so far, the appellant do have a very good case. However, when we have found that at the time of filing of the

suit, there was no subsisting leasehold rights in favour of the plaintiff, the suit must fail.

The appeal is, therefore, allowed. Judgment and decree passed by the trial court is hereby set aside. There shall be no order as to costs.

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